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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|--------------------------|------------------|
| 10/038,675 | 12/31/2001 | Mathew L. Koele | KCC 4772; K.C. No.16,738 | 9036 |
| 321 | 7590 | 03/17/2004 | EXAMINER | |
| SENNIGER POWERS LEAVITT AND ROEDEL ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102 | | | KIDWELL, MICHELE M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3761 | |
| DATE MAILED: 03/17/2004 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|-----------------------------|------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/038,675 | KOELE ET AL. |
| | Examiner Michele Kidwell | Art Unit 3761 |

-- The MAILING DATE of this communication appars on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 22 December 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-36 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-36 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 1 – 34 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 10, 12 – 14, 16 – 24 and 26 – 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson et al. (US 5,614,281).

With respect to claim 1, Jackson et al. (hereinafter "Jackson") discloses a mechanical fastening system for an article comprising a first fastening component mountable on the article and comprising a stretchable loop material formed from a laminate including a high bond point nonwoven facing having greater than 225 bond points per square inch (col. 8, lines 1 – 12) joined to an elastic substrate (col. 9, line 66 to col. 10, line 4) and a second fastening component mountable on the article so as to be engageable with the first fastening component, the second fastening component being made of a hook material (figure 3), wherein the stretchable loop material is stretchable during

limited movement of the first fastening component relative to the second fastening component when the fastening components are engaged as set forth in figure 6.

The difference between Jackson and claim 1 is the provision that nonwoven facing has greater than 225 bond points per square inch.

It would have been obvious to one of ordinary skill in the art to modify the nonwoven facing of Jackson to provide a greater than 225 bond points per square inch because Jackson discloses the use of about 220 bond points per square inch and teaches that bond densities above the stated range may be used.

With respect to the stretching of the loop material during limited movement of the first fastening component, the examiner notes that the applicant attributes this limitation to position of the loop materials on the product. Specifically, the applicant positions the fastening components along the distal edges of the back side panels abutting or adjacent to the waist end edge [0078]. Jackson discloses the same positioning of the fastening component as set forth in figure 6. In view of this, it can be reasonably assumed that the identical positioning of the identical material of Jackson will ultimately yield a material that is stretchable during limited movement of the first fastening component relative to the second fastening component when the components are engaged as claimed by the applicant.

Lastly, Jackson incorporates Giacobbe (5453318) by reference to demonstrate suitable films for the support layer.

Giacobbe teaches an elastic layer as set forth in col. 1, lines 49 – 55; col. 3, lines 40 – 42; col. 12, lines 1 – 3.

With reference to claims 2 – 3, 6, 9, 13, 17, 20, 23, 27, 30 and 33, Jackson discloses a nonwoven facing having greater than 20% bond area as set forth in col. 8, lines 1 – 4.

The difference between Jackson and claim 4 is the provision that the bond area is greater than 30%.

It would have been obvious to one of ordinary skill in the art to provide Jackson with a bond area greater than 30% since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

The difference between Jackson and claim 5 is the provision that nonwoven facing has greater than 250 bond points per square inch.

It would have been obvious to one of ordinary skill in the art to modify the nonwoven facing of Jackson to provide a greater than 250 bond points per square inch because Jackson discloses the use of about 220 bond points per square inch and teaches that bond densities above the stated range may be used.

Additionally, it would have been obvious to one of ordinary skill in the art to provide Jackson with the claimed bond points since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

With reference to claims 7, 10, 14, 18, 21, 24, 28, 31 and 34 see the rejection of claim 4.

The difference between Jackson and claim 8 is the provision that nonwoven facing has greater than 275 bond points per square inch.

It would have been obvious to one of ordinary skill in the art to modify the nonwoven facing of Jackson to provide a greater than 275 bond points per square inch because Jackson discloses the use of about 220 bond points per square inch and teaches that bond densities above the stated range may be used.

Additionally, it would have been obvious to one of ordinary skill in the art to provide Jackson with the claimed bond points since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

With reference to claims 12, 29 and 32, see the rejection of claims 1 – 2.

Regarding claims 16 and 26, see the rejection of claims 1 – 2.
Additionally, Jackson discloses a disposable absorbent article comprising first and second end regions, a liquid impermeable inner layer, an outer layer and an absorbent layer disposed therebetween as set forth in col. 14, lines 23 – 60.

As to claims 19 and 22, see the rejection of claim 8.

The difference between Jackson and claim 35 is the provision that the elastic substrate is a stretch-thermal laminate, a neck-bonded laminate, a reversibly necked laminate or a stretch-bonded laminate material.

The examiner has consulted the instant specification and concludes that type of elastic used does not solve any stated problem or produce any unexpected result and it appears that the substrate would perform equally well with any type of elastic and because there is no criticality associated with the individual types of elastic the examiner considers that the type of elastic to be a matter of engineering design choice.

The difference between Jackson and claim 36 is the provision that the first fastening component may be elongated about 100% in at least one direction.

Jackson, through the incorporation of Giacobbe, discloses a fastening component including the elastic substrate of Giacobbe that may be elongated about 100% in at least one direction (see Table 2 of Giacobbe).

Claims 11, 15 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson et al. as applied to claims 1- 10, 12 – 14 and 16 – 34 above, and further in view of Buell et al. (US 5,628,741).

The difference between Jackson and claims 11, 15 and 25 is the provision that the material comprises a mechanically restrained composite.

Buell et al. (hereinafter "Buell") teaches a material comprising a mechanically restrained composite as set forth in the abstract.

It would have been obvious to one of ordinary skill in the art to modify the material of Jackson to provide a mechanically restrained composite because the mechanically restrained composite will enhance the performance of the elastic feature as taught by Buell in the abstract and in col. 2, lines 7 – 16.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michele Kidwell
Michele Kidwell
March 3, 2004


JOHN J. CALVERT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700